

emission standard based on a projection that you will have enough emission credits to offset the deficit for the engine family. However, we may void the certificate of conformity if you cannot show in your final report that you have enough actual emission credits to offset a deficit for any pollutant in an engine family.

(c) We may void the certificate of conformity for an engine family if you fail to keep records, send reports, or give us information we request.

(d) You may ask for a hearing if we void your certificate under this section (see § 1033.920).

§ 1033.750 Changing a locomotive's FEL at remanufacture.

Locomotives are generally required to be certified to the previously applicable emission standard or FEL when remanufactured. This section describes provisions that allow a remanufactured locomotive to be certified to a different FEL (higher or lower).

(a) A remanufacturer may choose to certify a remanufacturing system to change the FEL of a locomotive from a previously applicable FEL or standard. Any locomotives remanufactured using that system are required to comply with the revised FEL for the remainder of their service lives, unless it is changed again under this section during a later remanufacture. Remanufacturers changing an FEL must notify the owner of the locomotive that it is required to comply with that FEL for the remainder of its service life.

(b) Calculate the credits needed or generated as specified in § 1033.705, except as specified in this paragraph. If the locomotive was previously certified to an FEL for the pollutant, use the previously applicable FEL as the standard.

Subpart I—Requirements for Owners and Operators

§ 1033.801 Applicability.

The requirements of this subpart are applicable to railroads and all other owners and operators of locomotives subject to the provisions of this part, except as otherwise specified. The prohibitions related to maintenance in § 1033.815 also applies to anyone per-

forming maintenance on a locomotive subject to the provisions of this part.

§ 1033.805 Remanufacturing requirements.

(a) See the definition of “remanufacture” in § 1033.901 to determine if you are remanufacturing your locomotive or engine. (NOTE: Replacing power assemblies one at a time may qualify as remanufacturing, depending on the interval between replacement.)

(b) See the definition of “new” in § 1033.901 to determine if remanufacturing your locomotive makes it subject to the requirements of this part. If the locomotive is considered to be new, it is subject to the certification requirements of this part, unless it is exempt under subpart G of this part. The standards to which your locomotive is subject will depend on factors such as the following:

- (1) Its date of original manufacture.
- (2) The FEL to which it was previously certified, which is listed on the “Locomotive Emission Control Information” label.
- (3) Its power rating (whether it is above or below 2300 hp).
- (4) The calendar year in which it is being remanufactured.

(c) You may comply with the certification requirements of this part for your remanufactured locomotive by either obtaining your own certificate of conformity as specified in subpart C of this part or by having a certifying remanufacturer include your locomotive under its certificate of conformity. In either case, your remanufactured locomotive must be covered by a certificate before it is reintroduced into service.

(d) If you do not obtain your own certificate of conformity from EPA, contact a certifying remanufacturer to have your locomotive included under its certificate of conformity. Confirm with the certificate holder that your locomotive's model, date of original manufacture, previous FEL, and power rating allow it to be covered by the certificate. You must do all of the following:

- (1) Comply with the certificate holder's emission-related installation instructions, which should include the following:

(i) A description of how to assemble and adjust the locomotive so that it will operate according to design specifications in the certificate. See paragraph (e) of this section for requirements related to the parts you must use.

(ii) Instructions to remove the Engine Emission Control Information label and replace it with the certificate holder's new label. NOTE: In most cases, you must not remove the Locomotive Emission Control Information label.

(2) Provide to the certificate holder the information it identifies as necessary to comply with the requirements of this part. For example, the certificate holder may require you to provide the information specified by § 1033.735.

(e) For parts unrelated to emissions and emission-related parts not addressed by the certificate holder in the emission-related installation instructions, you may use parts from any source. For emission-related parts listed by the certificate holder in the emission-related installation instructions, you must either use the specified parts or parts certified under § 1033.645 for remanufacturing. If you believe that the certificate holder has included as emission-related parts, parts that are actually unrelated to emissions, you may ask us to exclude such parts from the emission-related installation instructions. NOTE: This paragraph (e) does not apply with respect to parts for maintenance other than remanufacturing; see § 1033.815 for provisions related to general maintenance.

(f) Failure to comply with this section is a violation of 40 CFR 1068.101(a)(1).

§ 1033.810 In-use testing program.

(a) *Applicability.* This section applies to all Class I freight railroads. It does not apply to other owner/operators.

(b) *Testing requirements.* Annually test a sample of locomotives in your fleet. For purposes of this section, your fleet includes both the locomotives that you own and the locomotives that you are leasing. Use the test procedures in subpart F of this part, unless we approve different procedures.

(1) Except for the cases described in paragraph (b)(2) of this section, test at

least 0.075 percent of the average number of locomotives in your fleet during the previous calendar year (i.e., determine the number to be tested by multiplying the number of locomotives in the fleet by 0.00075 and rounding up to the next whole number).

(2) We may allow you to test a smaller number of locomotives if we determine that the number of tests otherwise required by this section is not necessary.

(c) *Test locomotive selection.* Unless we specify a different option, select test locomotives as specified in paragraph (c)(1) of this section (Option 1). In no case may you exclude locomotives because of visible smoke, a history of durability problems, or other evidence of malmaintenance. You may test more locomotives than is required by this section.

(1) *Option 1.* To the extent possible, select locomotives from each manufacturer and remanufacturer, and from each tier level (e.g., Tier 0, Tier 1 and Tier 2) in proportion to their numbers in the your fleet. Exclude locomotives tested during the previous year. If possible, select locomotives that have been operated for at least 100 percent of their useful lives. Where there are multiple locomotives meeting the requirements of this paragraph (c)(1), randomly select the locomotives to be tested from among those locomotives. If the number of certified locomotives that have been operated for at least 100 percent of their useful lives is not large enough to fulfill the testing requirement, test locomotives still within their useful lives as follows:

(i) Test locomotives in your fleet that are nearest to the end of their useful lives. You may identify such locomotives as a range of values representing the fraction of the useful life already used up for the locomotives.

(ii) For example, you may determine that 20 percent of your fleet has been operated for at least 75 percent of their useful lives. In such a case, select locomotives for testing that have been operated for at least 75 percent of their useful lives.

(2) *Option 2.* If you hold a certificate for some of your locomotives, you may ask us to allow you to select up to two locomotives as specified in subpart E of